

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
amendment of ARM 17.8.335 ) ON PROPOSED AMENDMENT  
pertaining to Maintenance of )  
Air Pollution Control )  
Equipment for Existing ) (AIR QUALITY)  
Aluminum Plants

TO: All Concerned Persons

1. On December 1, 2004, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 22, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.335 MAINTENANCE OF AIR POLLUTION CONTROL EQUIPMENT FOR EXISTING ALUMINUM PLANTS (1) The department may not initiate an enforcement action for a violation of ARM 17.8.111, 17.8.334(2), or any emission standard, except the requirements of 40 CFR Part 63, as incorporated by reference in this chapter, resulting from necessary scheduled maintenance of air pollution control equipment at an existing primary aluminum reduction plant, as defined in ARM 17.8.330, if:

(a) through (11) remain the same.

AUTH: 75-2-111, MCA

IMP: 75-2-203, MCA

REASON: On July 26, 2002, the Board adopted New Rule I, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, which was numbered ARM 17.8.335. The rule prohibits the Department from taking enforcement action for

violations of various rules, including emission limits, that occur when control equipment is bypassed at an aluminum plant during scheduled maintenance.

The proposed revision to the state implementation plan was submitted to EPA on January 16, 2003. On October 29, 2003, EPA proposed to disapprove this State Implementation Plan (SIP) revision (Federal Register Volume 68, Number 209, pages 61650-61654). In addition to concerns about the rule itself, EPA expressed two concerns regarding the interaction of ARM 17.8.335 with the national emission standards for hazardous air pollutants for primary aluminum reduction plants (the maximum achievable control technology or MACT standard).

The first concern is that the state may impact its automatic delegation of the MACT standard because the new rule could be interpreted to alter the requirements of the delegated MACT standard. EPA's MACT standard does not include any provision for exempting excess emissions during a maintenance event. Any excess emissions must be reported and enforcement discretion must be available to determine what, if any, enforcement action is appropriate for the event. The MACT standard was automatically delegated to the state under the condition that the state's rule be identical to the EPA rule (40 CFR 63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn.

EPA's second concern is that, by adopting ARM 17.8.335, the state has rules with conflicting requirements - one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the regulated entity and the public as to which one applies.

The proposed rulemaking would add language to ARM 17.8.335 to address EPA's MACT concerns by specifying that the enforcement prohibition does not apply to enforcement of the MACT standard. However, this rulemaking does not address all of EPA's concerns with ARM 17.8.335.

The Board will also take testimony on submission of proposed amendments to EPA as proposed revisions to the SIP.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., December 8, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been  
MAR Notice No. 17-217 20-10/21/04

designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to [ber@state.mt.us](mailto:ber@state.mt.us); or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

BY: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Reviewed by:

David Rusoff  
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 8, 2004.